(2) Supreme Court, U.S.
FILED
No. 00-465 SEP 25 2000
OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES
October Term, 2000

William R. Murray, *Petitioner*,
v.
Greyhound Lines Inc., *Respondent*.

APPENDICES

A. Complaint filed July 1, 1999 in CV-99-843 (Circuit Court for Tuscaloosa County, AL)

B. N.D. Ala. "MEMORANDUM OPINION GRANTING MOTION TO DISMISS" and "ORDER OF DISMISSAL," both dated Sept. 17, 1999

C. N.D. Ala.'s October 4, 1999 "DENIAL" of MURRAY's Sept. 29, 1999 "MOTION TO VACATE DISMISSAL"

D. 11th Circuit [Unpublished] May 16, 2000 Opinion

E. 11th Circuit July 3, 2000 "DENIAL" of Rehearing

F. 11th Circuit JUDGMENT dated May 16, 2000, issued as a MANDATE on July 19, 2000

72 pp

APPENDIX A-1

IN THE CIRCUIT COURT FOR
TUSCALOOSA COUNTY, ALABAMA

William R. MURRAY, Plaintiff	)	Civil Action Number
v.	)	
GREYHOUND LINES, INC., (GLI), a Delaware Corporation, Defendant	)	CV-99-843
	)	Jury Trial Demanded

COMPLAINT FOR FRAUD,
FOR BREACH OF CONTRACT,
AND FOR ASSAULT/ENDANGERMENT

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* page numbers of original Complaint, deleted here

APPENDIX A-2

Part A

Jurisdictional Statement

A-1. Plaintiff William R. Murray ("MURRAY") is now, and at all times pertinent hereto has been, a resident of the State of Alabama. He is also an attorney licensed to practice law in the Court s of the State of Alabama. In this case, he is proceeding "Pro Se."

A-2. Defendant GREYHOUND LINES, INC. (hereafter "GLI") is a Delaware corporation with its principal place of business in Dallas, Texas. GLI is sued both in its own corporate status and in its status as employer of EMPLOYEE DRIVERS "A," "B," and "C," as appears more fully below.

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A-3. GLI does substantial business throughout the United States, including the State of Alabama, with its Registered Agent being:

The Corporation Company
2000 Interstate Park Drive
Montgomery, AL 36109;

A-4. The Contract underlying this litigation was entered into in GLI's Tuscaloosa, Alabama bus station on May 4, 1999. Then and there, MURRAY paid GLI in full, in advance, as required by GLI, for round-trip transportation from Tuscaloosa, AL to White Plains, NY and return.

A-5. The events underlying the allegations in this lawsuit occurred, in chronological order, in the States of VA, NC, SC, GA, and AL during May, 1999.

APPENDIX A-4

Part B

Allegations Common to All Counts

B-1. On Tuesday, May 4, 1999, MURRAYpurchased a round-trip ticket between Tuscaloosa, Alabama, and White Plains, New York. The trip was completed as scheduled, and no untoward incidents occurred during the first half of the itinerary, from Alabama to New York.

B-2. The events underlying this Complaint began on the return trip, from NY to AL, on Defendant GLI's scheduled run #1543 (hereafter "GLI 1543").

B-3. In New York City NY, the passengers, including MURRAY, were told that they were boarding a "through" bus to Charlotte, NC.

B-4. However, when GLI 1543 arrived in Richmond VA, MURRAY was told he would be required to change buses for the next portion (Richmond VA - to - Charlotte NC) of the trip. MURRAY asked why the change was required, but was refused any explanation. Bus #1524 was assigned for that next portion of GLI 1543.

B-5. The driver on the Richmond VA - to - Charlotte NC leg of Schedule GLI 1543 was a female, about 30 years of age, whose name badge was not visible, if in fact she was wearing one. MURRAY presently has no further identification, for reasons stated hereafter, and will hereafter designate her as "EMPLOYEE DRIVER "A." "

B-6. GLI 1543 was scheduled to leave Richmond VA at 11:15 P.M., but did not leave the terminal until 11:56 P.M.

B-7. MURRAY asked EMPLOYEE DRIVER "A" why the bus was so late, and she stated that she didn't know. She did not offer to find out. She seemed irritated that MURRAY had asked.

B-8. At no time during the extra 41-minute Richmond delay was there any announcement about why the bus was not boarding or when the passengers could expect to board it, nor even the hint of an apology about the delay. Thus, about three (3) dozen passengers stood in line in a reasonable expectation of boarding, and more passengers waited in whatever seats were available, for about an hour

(i.e., from about 10:45 P.M. until 11:45 P.M.) just waiting .

B-9. MURRAY was permitted to board bus GLI 1543 at about 11:45 P.M.

B-10. MURRAY saw that seats #1 and #2 were occupied by what appeared to be "regular" paying, non-disabled customers, and that seats #3 and #4 were "occupied" only by two pieces of small personal luggage.

Note: Seats are numbered from left to right, front to rear, while facing in a forward direction: seat #1 is directly behind the driver, and seat #4 is next to the right window, and both seats are in the first row.

B-11. MURRAY asked EMPLOYEE DRIVER "A" if he could sit in either seat #3 or $4, and was told that they were reserved for drivers who were or going to other locations, or "deadheading."

B-12. MURRAY argued that there were no laws, regulations, or other publicly-published provisions posted anywhere in GLI terminals or on his ticket or itinerary which announced that "reservations" or seat preferences are given to such drivers, especially for "prime" seats like #3 and #4, which comprise the right-hand, front-row seats.

B-13. EMPLOYEE DRIVER "A" again stated that MURRAY could not sit in either seat #3 or seat #4, so MURRAY did not try to argue further, and took the nearest unoccupied seat, #7 (second row, right side, aisle seat).

B-14. Then a female, about 30 years of age, and dressed in the garb of a GLI employee/driver, just like EMPLOYEE DRIVER "A," and also without any name badge or other identification showing, whom

MURRAY hereafter designates as "EMPLOYEE DRIVER "B,"" came onto the bus and sat down in seat #4 after moving the personal baggage from it onto the overhead rack above it.

B-15. MURRAY again asked EMPLOYEE DRIVER "A" if he could sit in seat #3, which was still "occupied" only by a small piece of personal luggage, and she again told MURRAY that he could not sit there.

B-16. When MURRAY asked EMPLOYEE DRIVER "A" why he could not sit in seat #3, she would not answer him.

B-17. When MURRAY asked EMPLOYEE DRIVER "A" her name, she would not tell him and stated that, if he wanted to learn her name, he would have

to go back into the terminal and ask for her name at the "customer service" area.

B-18. MURRAY then asked "EMPLOYEE DRIVER "B," by what authority seat #3 was being occupied only by the piece of personal baggage lying on the seat next to her.

B-19. "EMPLOYEE DRIVER "B" stated that seat #3 was reserved for that piece of baggage.

B-20. MURRAY remained in seat #7 rather than be left behind in Richmond VA, since he was aware that schedule GLI 1543 was already more than a half-hour late, and that it was getting ready to leave the Richmond terminal.

B-21. MURRAY argued that such a concept was absolutely ridiculous, that neither she nor that

personal luggage had any right to occupy either seat #3 or seat #4, and that, as a regular paying customer, MURRAY had a superior right to either seat #3 or seat #4.

B-22. MURRAY demanded that he be allowed to occupy seat #3. "EMPLOYEE DRIVER "B" just sneered at him and refused to remove the small bag from seat #3.

B-23. MURRAY then asked "EMPLOYEE DRIVER "B" her identity, but she also would not provide any information. When MURRAY told her that she was required to disclose her identity or wear a visible name badge, she just made a vulgar remark.

B-24. MURRAY was therefore required to ride in seat #7 all the way from Richmond VA, to Charlotte NC, looking over the back of seat #3, which

remained "occupied" by that small piece of personal luggage belonging to either "EMPLOYEE DRIVER "A" or to "EMPLOYEE DRIVER "B."

B-25. GLI 1543 started backing out of the Richmond VA terminal at 11:56 P.M., went without any stops, and arrived at the Charlotte NC terminal at 4:29 A.M., for a total time enroute time of four (4) hours and thirty three (33) minutes rather than the five (5) hours and fifteen (15) minutes called for in schedule GLI 1543. Those times were registered on the same watch.

B-26. MURRAY alleges that GLI's own records show that the Richmond-Charlotte terminal-to-terminal distance is approximately three hundred twenty (320) statute miles.

B-27. MURRAY alleges that the maximum speed limit anywhere along GLI's Richmond- Charlotte segment of GLI 1543 is 65 M.P.H., with lower limits due to construction and lower speed limits in some places.

B-28. MURRAY alleges that Schedule GLI 1543 had a "rest stop" scheduled in Butler NC which was by-passed by EMPLOYEE DRIVER "A" without warning or apology.

B-29. MURRAY alleges that any vehicle (i.e., a bus) must travel well below 65 MPH during the course of leaving one city (Richmond) and entering another (Charlotte).

B-30. MURRAY alleges that, because GLI 1543 traveled 320 miles in exactly 273 minutes, it must, as a matter of physics and arithmetic, have aver-

aged one point seven two one six (1.17216) miles per minute, or seventy point three two nine seven (70.32967) MPH.

B-31. MURRAY alleges that Schedule GLI 1543, by traveling an average of more than 70 MPH for 320 continuous miles, including slow-downs for construction, etc., placed MURRAY (and all the other passengers) in great danger.

B-32. Upon reaching the Charlotte NC terminal, and only after the bus was fully stopped and the door opened, MURRAY again spoke to "EMPLOYEE DRIVER "A" and "EMPLOYEE DRIVER "B" and again asked for their names, and both again refused to tell him.

B-33. MURRAY told both ladies that, if they would not tell him their names, he needed their photo-

graphs so that he could identify them later, and both ladies stated they would call the police if MURRAY tried to take their pictures.

B-34. EMPLOYEE DRIVER "B" then stated that MURRAY could put his camera "up you know where."

B-35. So, MURRAY took only a "downward and upside-down" picture of seat #3 while standing in front of seat #7 and a picture of the bus number and left the bus.

B-36. As MURRAY exited the bus, EMPLOYEE DRIVER "A" stated that she was going to call the police or security, and headed inside the terminal. MURRAY followed behindEMPLOYEE DRIVER "A," who then went into what is called the "customer

service" room in the terminal, where MURRAY met a Mr. Ira Hatchett.

B-37. MURRAY spoke with Mr. Hatchett, who was wearing a GLI identification badge, and who apparently was the "Customer Service Supervisor" at Charlotte, NC.

B-38. After explaining his complaints, MURRAY asked Mr. Hatchett if he could find out the names of EMPLOYEE DRIVER "A" and EMPLOYEE DRIVER "B."

B-39. Mr. Hatchett politely listened to MURRAY's story and tried to look the ladies' names up on his computer but the screen didn't show their names. Mr. Hatchett then explained that the information on EMPLOYEE DRIVER "A" had probably not yet been put into the database because she was driving a

"second unit" on Schedule GLI 1543, and that the name of EMPLOYEE DRIVER "B" would probably never appear in the database, since she was deadheading.

B-40. MURRAY then re-boarded GLI 1543 for the continuation of his trip. While waiting to board, MURRAY watched "new" EMPLOYEE DRIVER "C" make a walk-around inspection and make one or more entries in what appeared to be the vehicle logbook. He had probably noted that the following lights were not working:

a. The right front "parking light;" and,

b. Both the left and right lower side marker lights.

B-41. As MURRAY re-boarded bus #1524, he noticed that:

a. Seats #1 and #2 each had one piece of personal baggage in them;

b. Seat #3 had a "CD player" and other small electronic items in it, apparently belonging to the lady sitting in seat #4; and,

c. Seat #4 was occupied by a female who, as it it turned out, had no physical disability.

B-42. MURRAY asked EMPLOYEE DRIVER "C" if he could sit in seat #1, #2, or #3, none of which were occupied.

B-43. EMPLOYEE DRIVER "C" stated that Seats #1, #2, #3, and #4 were all reserved for disabled persons, and that MURRAY could not sit in any of them.

B-44. As EMPLOYEE DRIVER "C" got ready to close the door in preparation for departure,

MURRAY again protested the driver's seating decision, arguing that:

a. Seats #1 and #2 contained only personal luggage;

b. Seat #3 contained only a small personal CD player;

c. There were no disabled persons on board;

d. MURRAY would relinquish his seat if a disabled person did board the bus; and,

e. As a paying passenger, MURRAY had precedence over any lifeless non-paying piece of luggage or CD player, regardless of its ownership.

B-44. EMPLOYEE DRIVER "C" then rather curtly removed the piece of personal luggage from seat #2, onto the overhead rack, and MURRAY sat down in seat #2.

B-45. Seat #1 continued to be occupied by a single piece of EMPLOYEE DRIVER "C's" personal luggage, and Seat #3 remained occupied only by that CD player, for the rest of GLI 1543's Charlotte - Atlanta segment.

B-46. At the first rest stop after leaving Charlotte, NC, the lady in seat #4 exited and re-entered the bus without any apparent difficulty. If she had any disability entitling her to preferential seating, it was not apparent to MURRAY, who watched her carefully for some sign of disability.

B-47. MURRAY alleges that EMPLOYEE DRIVER "C" never used his seatbelt. A photograph of that loose-hanging seatbelt is available to support this allegation.

B-48. MURRAY alleges that, at all times pertinent hereto, EMPLOYEE-DRIVERS "A," "B." and "C" were employees of Defendant GLI, and that all of their acts and omissions occurred within the scope of their employment with GLI.

B-49. MURRAY alleges that Defendant GLI has at least constructively ratified the acts and omissions of its EMPLOYEE - DRIVERS "A," "B," and "C" in that GLI has not disciplined them nor has GLI satisfactorily responded to MURRAY's May 14, 1999 letter requesting they be appropriately disciplined and that proper entries be made in their respective personnel files.

APPENDIX A-22

Part C

Count #1: Fraud

C-1. All of the "Allegations Common to All Counts," contained above in "Part B," are hereby incorporated into this Count as though fully set forth herein.

C-2. MURRAY alleges that Defendant GLI has committed several types of "Fraud" upon him.

C-3. MURRAY alleges that GLI committed "promissory fraud" upon him in that:

a. At the time GLI promised to transport MURRAY according to the rules, regulations, and tariffs then in existence, it had no intention of so transporting MURRAY, but knew that its busses were operated by its employee-drivers in a fashion suited to the convenience of said drivers, such

as the reservation of seats for driver luggage and for dead-heading drivers, rather than the convenience of passengers;

b. At the time GLI promised to transport MURRAY safely, according to posted speed limits, it had no intention of so transporting MURRAY, and knew it had not disciplined employee - drivers who had driven as fast as they dared, consistent with retaining their driving privileges; and,

c. At the time GLI promised to transport MURRAY safely, according to Federal and State law, it had no intention of so transporting MURRAY, and knew that it had failed to discipline drivers who had failed to use seat belts.

C-4. MURRAY alleges that GLI committed "fraudulent misrepresentations" in that:

a. GLI's signage and advertisements, promising to transport MURRAY according to the rules, regulations, and tariffs then in existence, were in fact misrepresentations deliberately made by GLI to entice MURRAY to travel on GLI buses;

b. GLI's misrepresentations, by tariff and other rules, that it had no reserved seating on regular interstate routes, such as schedule GLI 1543, were deliberate misrepresentations, in that GLI knew its drivers prevented customers from sitting in seats wherein drivers and their deadheading cohorts placed themselves and their baggage; and,

c. GLI's statements, through signage and

advertisements, that it would provide safe transport were deliberate misrepresentations, since GLI knew, or should have known, that its employee-drivers often exceeded posted speed limits, thereby putting GLI passengers in substantial danger.

C-5. MURRAY alleges that GLI committed "fraudulent failure to disclose" in that:

a. GLI failed to disclose that its drivers would "reserve" front row seats for their own personal baggage, for deadheading colleagues, or for non-existent "disabled" persons;

b. GLI failed to disclose that its drivers would be driving its busses at an excessive rate of speed;

c. GLI failed to disclose that its drivers had t the authority to by-pass scheduled "rest

stops;"

d. GLI failed to disclose that it did not discipline its drivers for infractions of tariffs, rules and regulations, and Federal and State law; and,

e. GLI did not disclose that its drivers could refuse to wear any identification and refuse to divulge their identities to passengers who desired to file complaints.

C-6. MURRAY alleges that the various forms of Fraud committed by Defendant GLI directly and proximately caused him to be forced to undergo a range of insults and indignities, and to be placed in a position of physical danger.

C-7. MURRAY alleges that the frauds of Defendant GLI destroyed the value of the portion of his return

trip from Richmond, VA to Tuscaloosa, AL.

C-7. For Defendant GLI's fraud, MURRAY requests both compensatory and punitive damages in amounts to be determined by a struck Jury of his peers.

Part D

Count #2: Breach of Contract

D-1. All of the "Allegations Common to All Counts," contained above in "Part B," are hereby incorporated into this Count as though fully set forth herein.

D-2. MURRAY alleges that Defendant GLI holds itself out as willing and able to provide safe, courteous passage on its busses, in exchange for

the payment of a fee ("fare").

D-3. MURRAY alleges that he paid his fare in full, in advance, and that, at the moment he made his payment, a CONTRACT (hereafter "MURRAY- GLI CONTRACT") came into existence whereby, in exchange for said payment by MURRAY, GLI promised to transport MURRAY in a safe and reasonably expeditious manner from Tuscaloosa, AL to White Plains, NY, and return, at stated times and by the route stated on MURRAY's itinerary.

D-4. MURRAY alleges that, as a matter of law, all of the following considerations, among many others, became a part of the MURRAY - GLI CONTRACT:

a. All unposted and posted tariffs, rules and regulations relating to travel on GLI busses,

including but not limited to:

(1) Reserved seating;

(2) Preferential seating for disabled persons, deadheading drivers, and personal luggage;

b. All speed limits posted by any state or local governmental entity ; and,

c. The wearing of seat belts by drivers at all times.

D-5 MURRAY alleges that Defendant GLI failed to carry out (breached) the MURRAY- GLI CONTRACT in several respects, not the least of which are:

a. EMPLOYEE DRIVERS "A" and "B" deliberately and unlawfully prevented MURRAY from sitting in seat #3 during the Richmond - Charlotte portion of schedule GLI 1543, when he had

every right to do so according to the MURRAY-GLI CONTRACT;

b. EMPLOYEE DRIVERS "A" and "B," by not wearing any visible identification, and by refusing to divulge their identity, deliberately and unlawfully prevented MURRAY from determining their identity;

c. EMPLOYEE DRIVER "A" deliberately operated Bus #1534 at an illegally high rate of speed almost continuously during 320-mile Richmond - Charlotte portion of schedule GLI 1543, in breach of GLI's promise to transport MURRAY lawfully;

d. EMPLOYEE DRIVER "C" deliberately and unlawfully prevented MURRAY from sitting in seat #1 and #3 during the Charlotte- Birmingham portion of schedule GLI 1543, when MURRAY had every right to sit there under the

MURRAY- GLI CONTRACT; and,

e. EMPLOYEE DRIVER "C" operated Bus #1534 without wearing any seat belt, in violation of GLI's promise to transport MURRAY safely.

D-6. MURRAY re-alleges that Defendant EMPLOYEES - DRIVERS "A," "B," and "C" were, at all times pertinent hereto, employees of Defendant GLI and were acting within the scope of their employment with GLI.

D-7. MURRAY alleges that Defendant GLI's acts and omissions, committed by itself directly and through its employee drivers "A," "B," and "C," constitute breaches of the MURRAY-GLI CONTRACT.

D-8. MURRAY alleges that GLI's breaches of contract directly and proximately caused him to be

placed in substantial danger and also destroyed any enjoyment for that portion of his itinerary from Richmond, VA to Tuscaloosa, AL on his return trip, for which he seeks compensatory damages in an amount to be determined by a Jury.

Part E

Count #3: Assault/Endangerment

E-1. All of the "Allegations Common to All Counts," contained above in "Part B," are hereby incorporated into this Count as though fully set forth herein.

E-2. MURRAY alleges that the acts and omissions of GLI, acting through its EMPLOYEE DRIVERS "A" and "C," caused him to be placed in fear and danger.

E-3. MURRAY concedes that Alabama generally requires a "touching" for any assault, but alleges that the following activities should be considered such egregious conduct as to amount to a "touching " for purposes of establishing the "reasonable fear of, and apparent ability to inflict injury or damage" generally required under Alabama law:

a. Operating a loaded bus at illegally excessive speeds, in this case where EMPLOYEE DRIVER "A" averaged more than 70 MPH for 320 miles, where the driver effectively has "captive passengers;" and,

b. Operating a bus with the driver's seatbelt hanging uselessly at his side, as was done by EMPLOYEE DRIVER "C."

E-4. MURRAY alleges that the acts of GLI, acting through its EMPLOYEE DRIVERS "A" and "C," constitute assaults.

E-5. MURRAY alleges that the assaults of GLI directly and proximately caused his substantial fear and that they placed him in substantial danger, in addition to destroying any chance he might otherwise have had to enjoy that portion of his return trip from Richmond VA to Tuscaloosa, AL.

E-6. For Defendant GLI's assaults, MURRAY requests both compensatory and punitive damages in amounts to be determined by a Jury of his peers.

APPENDIX A-35

Part F

Demand for Jury Trial

F-1. MURRAY hereby demands that a struck Jury be empaneled to make all of the fact determinations called for in this litigation, and to determine the amounts of damages to be assessed.

Part G

Certificate of Service by Certified Mail

G-1. MURRAY hereby certifies that Service of the SUMMONS and COMPLAINT in this litigation has been requested by way of Certified Mail # Z 377 553 049, all postage and fees prepaid, with the Return Receipt addressed to the Clerk of This Court.

APPENDIX A-36

Submitted by:

(Signature)

William R. Murray
Plaintiff (Pro Se)

William R. Murray
Attorney at Law
Murray Lane
Northport, AL 35475
(205) 339-7080
Ala. Bar ID: MUR-012

Date: July 1, 1999

APPENDIX B-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

WILLIAM R. MURRAY,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NUMBER
vs.	)	
	)	99-C-1942-W
GREYHOUND LINES, INC.,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM OPINION GRANTING MOTION TO DISMISS

In this diversity case, the *pro se* Plaintiff William R. Murray in his 34-page complaint that the Defendant Greyhound Lines, Inc., ("Greyhound") defrauded him, assaulted and/or recklessly endangered him, and breached their contract. The case arises

out of the Plaintiff's round trip by Greyhound bus from Tuscaloosa, Alabama to White Plains, New York in May 1999. Convinced that the Plaintiff can prove no set of facts which would entitle him to relief, the Court will grant Greyhound's motion to dismiss.

I

According to the complaint, on May 4, 1999, the Plaintiff purchased a Greyhound round trip ticket to [sic: at] Tuscaloosa, Alabama, for travel to White Plains, New York. The trip to White plains was apparently uneventful. The return trip was not.

First, though he had been assured in New York City that the bus was a "through" bus to Charlotte,

North Carolina, the Plaintiff was required to change buses in Richmond, Virginia. The bus was 41 minutes late leaving the Richmond terminal. Then, the Plaintiff was denied his request to sit in "prime" seats #3 and #4, said seats having been reserved for "deadhead"(1) Greyhound drivers and their luggage.

On the Richmond-Charlotte leg of the trip, the driver exceeded the posted speed limits, with an average speed of 70.32968 miles per hour. The driver failed to stop at a scheduled "rest stop" without warning or apology. Complaint, p. 13. The female

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1. The term "deadhead" refers to bus drivers who occupy a seat on a bus operated by another driver en route to another location.

drivers failed to identify themselves when the Plaintiff requested them to do so:

> ...[T]he Plaintiff told both ladies that, if they would not tell him their names, he needed their photographs so that he could identify them later, and both ladies stated that they would call the police if [the Plaintiff] tried to take their pictures..
> ... [One of the female drivers] then stated that [the Plaintiff] could put his camera "up you know where."

Complaint, p. 14.

The bus' right front parking light and both its left and right lower side marker lights were inoperable. *Id.*, p. 17. The driver did not yuse his seatbelt. *Id.*, p. 20.

When the Plaintiff re-boarded the bus in Charlotte, the driver informed him that Seats 1-4 were reserved for disabled persons. But there were no

disabled persons on the bus. Seats 1 and 2 contained only personal luggage and a CD player occupied Seat 3 . *Id.*, 18. A female passenger occupied Seat 4, but "[i]f she had any disability entitling her to preferential seating, it was not apparent to [the Plaintiff], who watched her carefully for some sign of disability." *Id.*, p. 19. When the Plaintiff protested, the driver "rather curtly removed the piece of personal luggage from seat #2,...and [the Plaintiff] sat down in seat #2." *Id.*, p. 19.

Presumably still in Seat #2 of Greyhound bus #1542, the Plaintiff returned to Tuscaloosa.

This lawsuit followed. Filed initially in the Circuit Court of Tuscaloosa County, it was timely removed to this Court by Greyhound.

III

[Note by MURRAY: there is no section "II" but there are two section "III"s]

A Court should not dismiss a complaint "for failure to state a claim unless it appears beyond a doubt that the Plaintiff can prove no set of facts" that would entitle the Plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41, 45, 78 AS. Ct. 99, 101-02, 2 L.Ed.2d 80 (1957). See also *Jones v. Bd. Of Comm'r of the Alabama State Bar*, 737 F.2d 996 (11th Cir. 1984). A trial court, in ruling on a motion to dismiss, is required to view the complaint in a light most favorable to the Plaintiff. *Schever v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1947). See also *Sofarelli v. Pinellas County*, 931 F.2d 718, 721 (11th Cir. 1991). Although the Court must take the allegations in the complaint as true

when reviewing the motion to dismiss, it is not permitted to read into the complaint facts that are not there. *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 2944-46, 92 L.Ed.2d 209 (1986); *Beck v. Interstate Brands Corp.*, 953 F.2d 1275 (11th Cir. 1992). The threshold of sufficiency that a complaint must meet to survive a motion to dismiss is exceedingly low. *Ancata v. Prison Health Service, Inc.*, 769 F.2d 700, 703 (11th Cir. 1985)(citing Quality Foods de Centro America, S.A. v. Latin American Agribusiness Dev. Corp., 711 F.2d 989, 995 (11th Cir. 1983). However, when on the basis of a dispositive issue of law, no construction of the factual allegation of a complaint will support a cause of action, dismissal of the complaint is appropriate. *Executive 100, Inc. v. Marin County*, 922 F.2d 1536 (11th Cir. 1991), cert.

denied, 502 U.S. 810, 112 S.Ct. 55, 116 L.Ed 32 (1991); *Powell v. United States*, 945 F.2d 374 (11th Cir. 1991).

III

[Note by MURRAY: there is no section "II" but there are two section "III"s]

As noted earlier, the Plaintiff makes three claims in this case.

In order to prove fraud, i.e., a willful or reckless misrepresentation under Alabama law, a plaintiff must establish: (1) a false representation, (2) concerning an *existing* material fact, (3) made either with knowledge of the falsity of the representation or

recklessly, without sufficient information, (4) made with intent to induce the Plaintiff to act, (5) reliance by the Plaintiff, and (5) [sic: 6] damages sustained by the Plaintiff. APJI 18.01, 18.02.

On his second claim, breach of contract, the Plaintiff must show, *inter alia*, the breach of a substantial term or condition of the contract, and that he suffered damages as a result.

On his third claim, the Plaintiff concedes in his complaint (Complaint, p. 31 ¶ E-3) that a "touching" in rudeness or anger is an essential element of the tort of assault. Again, the Plaintiff must prove that he suffered damages as a result of the assault.

Given the allegations of the complaint, the Court concludes beyond doubt that the Plaintiff can prove no set of facts which would entitle him to relief. On the two tort claims, under Alabama law there can be no liability for "mere insults , indignities, threats, annoyances, petty oppressions, or other trivialities." *American Road Service Co. v. Inmon*, 394 So. 2d 361, 364-65 (Ala. 1980)(quoting RESTATEMENT (SECOND) OF TORTS ¶ 46 cmt. (D) at 73(1965)).

Equally beyond question is that Greyhound performed its basic obligation under the contract: it transported the Plaintiff from his home in Tuscaloosa to New York and back home again. It performed this without accident, loss of luggage, citation for speeding or missing lights. Moreover, the Plain-

tiff cannot show any legally cognizable damage as a result of the alleged breach of contract.

For these reasons, Greyhound's motion to dismiss will be granted.

DONE this [17th] Day of September, 1999.

(Signature)
UNITED STATES DISTRICT JUDGE
U. W. CLEMON

APPENDIX B-12

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

WILLIAM R. MURRAY,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NUMBER
vs.	)	
	)	99-C-1942-W
GREYHOUND LINES, INC.,	)	
	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

Based on the accompanying Memorandum Opinion, the Defendant's Motion to Dismiss is hereby GRANTED.

JUDGMENT is hereby ENTERED in favor of the Defendant GREYHOUND LINES, INC., and against the Plaintiff WILLIAM R. MURRAY.

The costs of this action are taxed against the Plaintiff.

DONE this 17th Day of September, 1999.

APPENDIX B-13

(Signature)

UNITED STATES DISTRICT JUDGE
U. W. CLEMON

APPENDIX C-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
(WESTERN DIVISION - TUSCALOOSA)

William R. MURRAY, Plaintiff	)	Civil Action No.
v.	)	CV-99-C-1942-W
GREYHOUND LINES, INC. ("GLI"), Defendant	)	Jury Trial Demanded

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PLAINTIFF'S MOTION TO VACATE DISMISSAL WITH PREJUDICE (FAILURE TO STATE A CLAIM)

Part	Description	Pg
A.	MURRAY's COMPLAINT validly alleges "Fraud"	2
B.	MURRAY's COMPLAINT validly alleges "B/Contract"	8
C.	MURRAY's COMPLAINT validly alleges "Endangerment"	13
D.	Summary: Dismissal should be Vacated	19
E.	Certificate of Service	20

DENIED

(Signed) 10/4/99
JUDGE DATE

APPENDIX D-1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 99-14247
Non-Argument Calendar

D.C. Docket No. 99-01942-CV-C-W

WILLIAM R. MURRAY,

Plaintiff-Appellant,

versus

GREYHOUND LINES, INC., (GLI),
a Delaware Corporation,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Alabama

(May 16, 2000)

Before TJOFLAT, BIRCH, and BARKETT, Circuit Judges.

APPENDIX D-2

PER CURIAM:

William R. Murray appeals form the district court's dismissal of his pro se complaint for failure to state a claim under Fed.R.Civ.P. 12(b)(6). On appeal, Murray argues that the district court erred by dismissing his complaint because he, in fact, set forth the requisite requirements to state a claim for fraud, breach of contract, and assault/endangerment, and because the complaint was based upon more than mere insults and indignities. We AFFIRM.

1. BACKGROUND

Murray, an Alabama attorney, filed this pro se action against Greyhound Lines, Inc., in the Circuit Court for Tuscaloosa, Alabama, asserting claims of fraud, breach of contract, and assault arising form a trip he took from White Plains, New York, to Tuscaloosa, Alabama, on Greyhound's bus line. R1-1, Exh. A. According to the

allegations in Murray's complaint, on the return trip, passengers were advised in New York City that they were boarding a "through" bus to Charlotte, North Carolina. When the bus arrived in Richmond, Murray was told that he would have to change buses for the next portion of the trip. Murray alleged that the bus from Richmond to Charlotte was 40 minutes late and the driver did not know why the bus was late and offered no explanation to the passengers. Upon boarding the bus and noting that seats number one and two were occupied, and that there was luggage placed in seats three and four, Murray asked the driver, referred to as Driver A, if he could sit in either seat number three or four but was advised that they were reserved for drivers who were "deadheading." An argument ensued, wherein Murray complained that there were no laws, regulations, or other publicly-published provisions that announced that reservations or seat

preferences would be given to drivers, "especially for 'prime' seats like number #3 and 4." Id at 7-8.

Murray proceeded to take another seat. Another bus driver, referred to as Driver B, then boarded the bus and sat in seat number four. Id. Murray again asked the Driver A if he could sit in seat number three. He was told that he could not, and was provided no explanation why. Murray then asked Driver B by what authority seat number three was being occupied only by a piece of luggage, and she stated that seat number three was reserved for that luggage. Murray began to argue with her, stating that , as a regular paying customer, he had a right to either seat number three or four superior to that of the "deadheading" driver and the luggage and demanded that he be allowed to occupy seat number three. Driver B refused to remove the luggage. Murray asked her for her name but she refused to provide it.

Upon arriving at the Charlotte station, Murray again asked the drivers for their names and they both refused. He then told them that if they would not provide their names, he needed to take their pictures so that he could identify them later. Both drivers stated that they would call the police if Murray tried to take their pictures. Driver B also stated that Murray could put his camera "up you know where." Id. at 14. As Murray exited the bus, Driver A stated that she was going to call the police. As she headed inside the terminal into the customer service room, Murray followed her and met Mr. Ira Hatchett, the defendant's Customer Service Supervisor. Murray then explained his complaints to Hatchett and asked if he could find out the employees' names. Hatchett listened to Murray's account and tried to ascertain the drivers' names from his computer, but was unable to do so. Id. At 16.

APPENDIX D-6

When Murray re-boarded the bus for the continuation of his trip, he noticed that seats number one and two each had one piece of luggage in them,, seat number three had a CD player and other small electronic items, and seat number four was occupied by a female who had no disability. Murray asked the driver, referred to as Driver C, if he could sit in seats number one, two, or three, but was advised that the seats were reserved for disabled passengers. Murray began to argue with the driver, stating that there were no disabled passengers in the seats and that, if he were allowed to sit there, he would relinquish his seat if a disabled passenger later boarded the bus. Murray also stated that, as a paying customer, he had precedence over pieces of luggage. Driver C removed the luggage from seat number two and allowed Murray to sit there Murray also argued in his complaint that he was placed in great danger because

Driver A drove at approximately 70.32967 m.p.h. when the maximum speed for the route was 65 m.p.h., and that Driver C did not wear a seat belt. Id. at 13, 20. He also asserted that Driver A failed to stop at a scheduled "rest stop" without warning or apology, and the bus' right front parking light and both its left and right lower side marker lights were inoperable. Id. at 13, 17.

Upon Greyhound's motion, the case was removed to the United States District Court for the Northern District of Alabama. R1-1. Greyhound subsequently filed a motion to dismiss Murray's complaint for failure to state a claim under Fed.R.Civ.P. Rule 12(b)(6). R1-3. Specifically, Greyhound argued that Murray could not recover damages for "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities," and that Murray's breach of contract and assault/endangerment claims did not rise to the level of an injury that

would support a claim for damages. Id. at 2, 3, 4. Murray responded, arguing that, as a matter of law, his damages for the action must exceed $75,000 based on Greyhound's removal of the case to the current jurisdiction, and that Greyhound cannot now seek dismissal of his complaint on grounds that his damages are less than $75,000. R1-4.

The district court granted Greyhound's motion to dismiss the complaint, finding that Murray failed to satisfy the requisite showing for a fraud claim, to show the breach of a substantial term or condition of the contract, or to establish the essential elements of the tort of assault. With respect to the two tort claims, the court found that there can be no liability under Alabama law for "mere insults, indignities, threats, annoyances, petty oppressions, and other trivialities." R1-6 at 5 (citing American Road Service Co. v. Inmon, 394 So.2d 361 (Ala. 1980).). The district court also found that Murray failed

to show that he suffered any damages from the alleged injury. R1-6, at 5. With respect to the contract claim, the district court specifically found that "Greyhound performed its basic obligation under the contract: it transported the Plaintiff from his home in Tuscaloosa to New York and back home again. It performed this without accident, loss of luggage, citation for speeding or missing lights." Id. Even assuming that Murray could show a breach of contract, the court found that he could not demonstrate any legally cognizable damages resulting therefrom. Id. The district court subsequently entered an order of dismissal. R1-7.

II. DISCUSSION

We review de novo a district court's decision to dismiss a case under Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. McKusick v.

City of Melbourne, 96 F.3d 478, 482 (11th Cir. 1996). We review a district court's decision to deny leave to amend the complaint for abuse of discretion. See Forbus v. Sears, Roebuck & Co., 30 F.3d 1402, 1404 (11th Cir. 1994).

Our review of the evidentiary record and the district court's findings and consideration of the brief reveals no reversible error. The district court correctly concluded that Murray failed to make the requisite showing for a claim of fraud. To prove fraud, Murray must establish: (1) a false representation; (2) concerning a material fact; (3) made either with knowledge of the falsity of the representation or recklessly, without sufficient information; (4) made with the intent to induce him to act; (5) reliance by him; and (6) damages sustained. See Kaye v. Pawnee Construction Company, Inc., 680 F.2d 1360, 1366 (11th Cir. 1982); Ala. Code § 6-5-101 (1999). Under Alabama law, damages for mental suffering are only

recoverable where there has been some physical injury or "extreme and outrageous conduct ... so severe that no reasonable person could be expected to endure it." Inmon, 394 So.2d at 363-65. Mere insults, threats, and annoyances are insufficient, standing alone, to recover damages. Id.

Here, Murray asserts that Greyhound's fraudulent conduct - i.e., misrepresenting in its advertising that it provided legal and safe interstate transportation to entice him to travel on its buses; misrepresenting that it had no reserved seating on regular interstate routes; failing to disclose that it permitted its drivers to exceed the speed limit; allowing its employees to be rude, refuse to identify themselves, and threaten passengers with arrest; operating its buses with illegal exterior lighting; and failing to discipline its employees for infractions of the rules - damaged him by "destroy[ing] the value of the

portion of his return trip from Richmond, VA, to Tuscaloosa, AL." R1-1, Exh. A at 21, 22, 25; see also Appellant's Brief, at 40-47. Nowhere in Murray's complaint or present argument does he establish that he did not arrive at his destination. Also, at no point does Murray indicate that he has been physically harmed by any conduct on the part of Greyhound. The gist of Murray's argument is that his return trip was not as pleasant as he would have liked because he was unable to sit in the seat of his choice. Although this may have angered him, it does not constitute a cognizable injury for which relief can be granted. See Inmon, 394 So.2d at 364-65. Therefore, the district court did not err in dismissing Murray's fraud claim.

Turning to Murray's breach of contract claim, he argues that Greyhound breached its contract by allowing its drivers to reserve seats for driver luggage and deadheading drivers, permitting its drivers to drive too fast,

allowing its drivers to drive without seat belts, not requiring its employees to wear identification badges and allowing them to refuse to identify themselves, and that he suffered damages as a result of the breach by being placed in substantial danger and because the breach destroyed any enjoyment for the return portion of his trip. See R1-1, Exh. A at 29-30. In dismissing this claim, the district court specifically found that "Greyhound performed its basic obligation under the contract" by transporting Murray where he wanted to go "without accident, loss of luggage, citation for speeding or missing lights." R1-6, at 5. The district court also found that Murray cannot show any legally cognizable damages as a result of the alleged breach of contract. Id.

To prove a claim for breach of contract, the plaintiff must show a breach of the terms and conditions of the contract and that he suffered damages as a result of the

breach. See Southern Medical Health Systems, Inc v. Vaughn, 669 So2d 978, 99 (Ala. 1995). In the present case, Murray failed to show that a condition or term of the contract has been breached or that he suffered cognizable damages. Therefore, the district court did not err by dismissing his breach of contract claim.

The district court also properly dismissed Murray's "assault/endangerment" claim because he did not state a valid claim for assault under Alabama law. As noted by the district court, Murray concedes in his complaint that a "touching" in rudeness or in anger is an essential element of the tort of assault under Alabama law, and that no such "touching" occurred ain his case. See R1-1, Exh. A at ¶ E-3. Murray, however, attempts to assert that, as a matter of logic, there must be a civil cause of action for "assault/endangerment" under Alabama law when a plaintiff has been deliberately placed in fear for

his life, even though he has not been physically touched, when a driver does not wear a seat belt and exceeds the speed limit "where the driver effectively has captive passengers." See Appellant's brief at 54-56. Nevertheless, no such cause of action is recognized under Alabama law and, therefore, the district court did not err by dismissing the assault/endangerment claim.

Lastly, we review a district court's decision to grant or deny leave to amend the complaint for abuse of discretion. See Forbus v. Sears, Roebuck & Co., 30 F.3d 1401, 1404 (11th Cir. 1994). Under Fed.R.Civ.P. Rule 15(a), a party may amend its pleading once as a matter of course at any time before a responsive pleading is served; otherwise, a party may amend its pleading only by leave of court or by written consent of the adverse party. In Long v. Satz, 181 F.3d 1275 (11th Cir. 1999), we held that "[f]ailure to properly request leave to amend, when he

had adequate opportunity and time to do so, precludes the plaintiff's argument on appeal that the district court abused its discretion by denying [his] leave to amend." Long, 181 F.3d at 1279-80; see also Burger King Corp. v. Weaver, 169 F.3d 1310, 1318 (11th Cir.), cert. dismissed, 120 S.Ct. 370 (1999) [sic]. To the extent that Murray's brief can be interpreted as challenging the district court's failure to offer him an opportunity to amend, Murray cannot show an abuse of discretion, as he never filed a motion for leave to amend, nor asserted any additional facts or claims that would correct any defects in his complaint, despite ample opportunity to do so. Because Murray failed to properly seek leave to amend his complaint from the court below he is precluded from raising an abuse of discretion argument on appeal.

AFFIRMED.

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* Should read: 135 S. Ct. _____ (1989)

APPENDIX E-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 99-14247-DD

WILLIAM R. MURRAY,

Plaintiff-Appellant,

versus

GREYHOUND LINES, INC. (GLI),

A Delaware Corporation,

Defendant-Appellee.

On Appeal from the United States
District Court for the Northern
District of Alabama

BEFORE: TJOFLAT, BIRCH and BARKETT,

Circuit Judges

APPENDIX E-2

PER CURIAM:

The Petition(s) for rehearing filed by Appellant, William R. Murray, is DENIED.

ENTERED FOR THE COURT:

(Signature of Circuit Judge Tjoflat(?))

_____

UNITED STATES CIRCUIT JUDGE

APPENDIX F-1

United States Court of Appeals
For the Eleventh Circuit

No. 99-14247
Non-Argument Calendar

District Court Docket No. 99-01942-CV

WILLIAM R. MURRAY,

Plaintiff-Appellant,

versus

GREYHOUND LINES, INC, (GLI),
a Delaware Corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

APPENDIX F-2

Before TJOFLAT, BIRCH and BARKETT, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United states District Court for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED.

APPENDIX F-3

IT IS FURTHER ORDERED THAT plaintiff-appellant pay to defendant-appellee, the costs on appeal to be taxed in accordance with Fed.R. App.P. 39.

Entered: May 16, 2000

For the Court: Thomas K. Kahn, Clerk

By: (Signature)
Deputy Clerk

ISSUED AS MANDATE: JUL 19 2000 (stamped)